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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1281

TRI TERMINAL CORPORATION,

Petitioner,

vs.

BOROUGH OF EDGEWATER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No.

TRI TERMINAL CORPORATION,
Petitioner,

vs.

BOROUGH OF EDGEWATER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioner respectfully prays that a writ of certiorari issue to review the Judgment of the Supreme Court of New Jersey entered on December 10, 1975 denying a rehearing of the matter which was the subject of an opinion entered on October 20, 1975.

CITATION TO OPINIONS BELOW

The opinion of the Division of Tax Appeals of the Department of the Treasury of the State of New Jersey is not officially reported but is included in the Appendix. (Appendix D: Pa24-28; E: Pa29-33).* The opinion of the Appellate Division of the Superior Court of New Jersey is not officially reported but is included in the Appendix (Appendix F: Pa34-46). The Order of the Appellate Division of the Superior Court of New Jersey denying a rehearing of this matter is included in the Appendix and not officially reported. (Appendix G: Pa47).

The Supreme Court of the State of New Jersey grant of certification in this matter is reported at 68 N.J. 155, 343

* Appendices referred to in this petition are included in the Petitioner's Appendix attached hereto.

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A.2d 443 (1975) and included in the Appendix (Appendix H: Pa48). The opinion of the New Jersey Supreme Court is reported at 68 N.J. 405, 346 A.2d 396 (1975) and included in the Appendix (Appendix I: Pa49-57).) The Order of the New Jersey Supreme Court denying a rehearing of this case is not officially reported but included in the Appendix (Appendix K: Pa62).

JURISDICTION

The final order of the Supreme Court of the State of New Jersey was entered on December 10, 1975 denying a rehearing of the matter which was the subject of an opinion entered on October 20, 1975. The opinion of the Supreme Court of New Jersey in this matter is in conflict with the Fourteenth Amendment of the Constitution. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

THE QUESTIONS PRESENTED

I. Is the failure of a tax assessor to consider relevant factors affecting the value of petitioner's property, which would lessen petitioner's assessment, intentional and arbitrary discrimination where the assessor is under a statutory duty to annually assess the property and all the assessor does is carry the same assessment for a number of years without change?

II. Is petitioner denied equal protection where it is denied relief after showing that its property is assessed at a higher level of assessment than that generally found in the taxing district where the proof as to the level of assessment in the taxing district is based upon a State study of ratios of assessed value to true value found in the taxing district?

CONSTITUTIONAL PROVISIONS

I. The equal protection clause of the Fourteenth Amendment of the Constitution.

STATEMENT

Tri Terminal Corporation, the petitioner herein, is the owner of two parcels of land in the Borough of Edgewater, County of Bergen and State of New Jersey. The one parcel of land referred to as the Ford tract was assessed for tax purposes at $4,918,400 and the other parcel, referred to as the Alcoa tract was assessed at $2,927,500 for the years of 1971 and 1972. These assessments were based on a revaluation conducted by an independent appraisal firm which valued all the property in the Borough as of October 1, 1968 at its true value. These assessments were implemented in the year 1969 and carried without change up to and including 1973. Tri Terminal Corporation filed appeals from the assessments with the Bergen County Board of Taxation (Appendix A; Pa1) for the years 1971 and 1972 alleging discrimination and excessive valuation. The Bergen County Board of Taxation affirmed the assessments (Appendix B; Pa6). Tri Terminal Corporation then filed appeals with the Division of Tax Appeals of the Department of Treasury of the State of New Jersey.

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ADMINISTRATIVE PROCEEDINGS

Tri Terminal Corporations petitions to the Division of Tax Appeals sought relief on the dual grounds of excessive valuation and discrimination (Appendix C; Pa12). Attached to these petitions was a "rider" which stated in part:

> That said assessment is illegal and erroneous and constitutes an unconstitutional assessment against it, in that according to a standard of value different from and higher than the standard used by the community in assessing other properties located in said community contrary to Article 8, Section 1, paragraph 1 of the Constitution of New Jersey 1947 and the 14th Amendment to the United States Constitution.

After the hearing of the appeals, Tri Terminal Corporation introduced evidence as to the true value of the subject property and ratios of assessed value to true value for sales of property in the Borough for the years in question.

The judge of the Division of Tax Appeals, with relation to the Alcoa tract, found that the taxpayer had not proved that the true value was other than as assessed and therefore dismissed the appeal so far as it alleged excessive valuation. The Division judge did find for the petitioner with regard to the discrimination issue and applied the average ratio of assessed to true value found in the Borough to the true value of the property to arrive at the assessable value (Appendix D; Pa24).

In relation to the petitioner's other tract of land, the Ford tract, the Division judge found weaknesses with both the reports of the expert for the taxpayer as well as for the taxing district. From the testimony produced at the

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trial, the Division judge made a finding as to the true value of this parcel. Finding in favor of the taxpayer as to the discrimination issue, the Division judge applied the average ratio of assessed to true value found in the taxing district to the true value finding to determine the assessable value for the years of 1971 and 1972 (Appendix E; Pa29). From these opinions the Borough of Edgewater appealed to Superior Court of New Jersey, Appellate Division.

PROCEEDINGS IN THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

The Borough's appeal basically alleged that the true value finding as to the Ford tracts of the Division of Tax Appeals was erroneous and that the taxpayer had not proven discrimination. The Appellate Division agreed with the Borough and reversed the finding of the Division of Tax Appeals as to the Ford tract stating:

> From a careful examination of the entire record, we determine that the true value of the improvements on the Ford tract for the tax years of 1971 and 1972 to be $3,669,400 and the land for said years to be $1,249,000, a total of $4,918,400 (Appendix F; Pa44).

As to the discrimination issue, the court found that the taxpayer had failed to prove that the assessments were discriminatory (Appendix F; Pa36-41), and reversed the judgment of the Division of Tax Appeals and directed that judgment be entered affirming the assessments of the properties (Appendix F; Pa45).

Tri Terminal Corporation petitioned the Appellate Division for a rehearing which was denied by way of Order dated March 7, 1975 (Appendix G; Pa47).

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PROCEEDINGS IN THE SUPREME COURT OF THE STATE OF NEW JERSEY

Tri Terminal Corporation petitioned the Supreme Court of New Jersey for certification. Certification was granted on June 4, 1975 and reported in 68 N.J. 155, 343 A.2d 443 (1975) (Appendix H; Pa48). One issue before the court was whether or not the instant taxpayers had been discriminated against. The New Jersey Supreme Court at 68 N.J. 405, 346 A.2d 396 (1975) (Appendix I; Pa49) stated that the taxpayers evidence was insufficient to show that is was assessed at a different level than the other taxpayers in the Borough.

Tri Terminal Corporation petitioned for a rehearing alleging that certain inconsistencies violated the taxpayer's constitutional rights (Appendix J; Pa58). The Supreme Court by Order dated December 10, 1975 denied the rehearing of this matter (Appendix K; Pa62).

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REASONS FOR GRANTING THE WRIT

I. The failure of a tax assessor to consider relevant factors affecting the value of petitioner's property which would lessen petitioner's assessment amounts to intentional and arbitrary discrimination where the assessor is under a statutory obligation to annually assess the property but instead carries the same assessment for a number of years without change.

It has long been established that a violation of the equal protection clause of the Fourteenth Amendment is shown where a taxpayer demonstrates that the property is assessed at its true value while other properties were assessed at only a percentage of its true value. *Sioux City Bridge Company v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L.Ed. 340 (1923). The taxpayer could also show a violation of the equal protection clause by demonstrating that while his property was assessed at the same level as other properties in the taxing district, his assessment should have been reduced because important factors affecting the value of his property were ignored by the assessor. *Cumberland Coal Company v. Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 52 S. Ct. 48, 76 L.Ed. 146 (1931).

The doctrine established in the *Cumberland* case, *supra*, appears to govern the present case. The instant taxpayer appeals from assessments placed on its property for the years of 1971 and 1972 by the Borough of Edgewater. These assessments were based upon a revaluation conducted by an independent appraisal firm for the entire taxing district. The values arrived at the appraisal firm were based upon each property's true value as of October 1, 1968, the assessing date for 1969. (*N.J.S.A.* 54:4-23). The assessor of the taxing district adopted the true value

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findings of the appraisal firm as assessments and used the same figures for the years 1969 through 1973 inclusive. These figures were not changed except where there was new construction. In this manner, the taxing district alleged it treated all taxpayers alike.

The instant taxpayer contends that the reliance by the taxing district on a base year revaluation for subsequent year's assessments results in unequal treatment and burden to a taxpayer whose property does not change in value at the same rate as other property in the taxing district from the base year revaluation. It is generally admitted that for the period in question, 1969 through 1973, the property values in the taxing district underwent a period of general inflation. The instant taxpayer, owner of commercial property, alleged that its property value did not reflect the same general increase in value which accompanied other property in the taxing district, specifically vacant land and residential property.

The New Jersey Constitution 1947, Art. VIII, §1, par. 1(a) provides in part:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of values, • • •.

N.J.S.A. 54:4-2.25 provides:

> All real property subject to assessment and taxation for local use shall be assessed according to the same standard of value, which shall be the true value of such real property and the assessment shall be expressed in terms of the taxable value of such property, which taxable value shall be that percentage of true value as shall be established by each county board of taxa-

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> tion as the level of taxable value to be applied uniformly throughout the county.

As a result of the above provisions, assessments must be at true value or at same uniform percentage of true value. Such requirement appears to fulfill the mandate of the Fourteenth Amendment of the Constitution. In addition to above law, *N.J.S.A.* 54:4-23 requires:

> All real property shall be assessed to the person owning the same on October 1 in each year. The assessor shall ascertain the names of the owners of all real property situate in his taxing district, and after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October first next preceding the date on which the assessor shall complete his assessments, as hereinafter required.

It would appear that the reliance on the 1968 revaluation by the taxing district would meet both the requirements of the Fourteenth Amendment and New Jersey law if all property in the municipality increased or decreased at a reasonably uniform rate from the base year. However, where an instant taxpayer's property does not reflect such a change, the reliance on the base year revaluation results in verbal equality only; the actual result is that the tax burden is redistributed in such a way that the instant taxpayer whose property has not changed at the same rate as the other property must bear a heavier share of the tax burden.

The inequality which results from the reliance on the base year revaluation in subsequent years despite the increase in property values at disparate rates is further brought into focus when it is noted that the tax assessor

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is obligated by statute to assess each parcel at its true value annually. The failure of the instant assessor to fulfill this duty for four years following the revaluation amounts to intentional and arbitrary discrimination against the taxpayer whose property has not been attended by the general increase in value which has ben reflected in other properties in the taxing district. The instant assessor has intentionally disregarded differences in the value of the property of the petitioning taxpayer which should have lessened its assessment. *Cumberland Coal Company v. Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 525 S. Ct. 48, 76 L.Ed. 146 (1931).

II. Proof as to the level of assessment in a taxing district based upon an independent state study comparing sales price with assessments in that taxing district is substantial; requiring the taxpayer to prove more results in a denial of equal protection.

In *Hillsborough Township v. Cromwell*, 326 U.S. 620, 66 S. Ct. 445, 90 L.Ed. 358 (1946) the Court noted that New Jersey had no effective remedy for correcting an assessment which was at a higher level than that generally found in the taxing district. The remedy to the taxpayer assessed at the higher level of bringing an action to raise all assessments to his level was a denial of the equal protection. As a result of the *Hillsborough* case, *supra*, New Jersey law has developed so that a taxpayer who is assessed at a higher level can have his assessment reduced to the level of assessment generally found in the taxing district.

This remedy was fashioned in the case of *In re Appeals of Kents*, 34 N.J. 21, 166 A.2d 763 (1961). In that case the New Jersey Supreme Court found that the ratios

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of assessed value to true value, developed by the Director of the Division of Taxation for the apportionment of school aid, indicated that for a given taxing district there existed no common level of assessment. The remedy for the taxpayer was a reduction of the true value of his property to the average of the ratios developed by the Director of the Division of Taxaation.

The ratios developed by the Director of the Division of Taxation are formulated pursuant to *N.J.S.A.* 54:1-35 *et seq.* for the distribution of school aid and included in an annual report. This report lists the true value and the average ratio of assessed to true value of real property in each taxing district in New Jersey.

This annual study by the Director of Taxation classifies property in four categories: vacant land, residential property, farm land and other properties (commercial, industrial and other investment properties). As sales of real property are recorded, the local assessor is informed of the sale and is required to complete a report showing the assessment, the sales price of the property as indicated in the verified affidavit of consideration attached to this deed (*N.J.S.A.* 46:15-6) and the class of the property. The assessor may also comment on any sale which he feels does not reflect true value. *The Handbook for New Jersey Assessors*[1] lists twenty-seven deed categories which are not considered usable; these include:

(1) Sales between members of the immediate family.

(2) Sales in which "love and affection" are stated to be part of the consideration.

(3) Sales between a corporation and its stockholder, its subsidiary, its affiliate or another corporation whose stock is in the same ownership.

1. *Bureau of Government Research, Rutgers, The State University, Handbook for New Jersey Assessors* (rev. ed. 1965).

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(4) Transfers of convenience; for example, for the sole purpose of correcting defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc.

(5) Transfer deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1, to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within this period is the determining date since it is the date of official record. Where the date of deed or date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be non-usable.

(6) Sales of property conveying only a portion of the assessed unit, usually referred to as apportionments, split-offs or cut-offs; for example, a parcel sold out of a larger tract where the assessment is for the larger tract.

(7) Sales of property substantially improved subsequent to assessment and prior to the sale thereof.

(8) Sales of an undivided interest in real property.

(9) Tax sales.

(10) Sales by guardians, trustees, executors and administrators.

(11) Judicial sales such as partition sales.

(12) Sheriff's sales.

(13) Sales in proceedings in bankruptcy, receivership or assignment for the benefit of creditors and dissolution or liquidation sales.

(14) Quit-claim deeds.

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(15) Sales to or from the United States of America, the State of New Jersey, and/or any political subdivision of the State of New Jersey; including boards of education and public authorities.

(16) Sales of property assessed in more than one taxing district.

(17) Sales to or from any charitable, religious or benevolent organization.

(18) Transfers to banks, insurance companies, savings and loan associations, mortgage companies, when the transfer is made in lieu of foreclosure.

(19) Sales where purchaser assumes more than two years of accrued taxes.

(20) Acquisition by railroads, pipeline companies or other public utility corporations for right-of-way purposes.

(21) Sales of cemetery lots.

(22) Transfers of property in exchange for other real estate, stocks, bonds, or other personal property.

(23) Sales of commercial or industrial real property which include machinery, fixtures, equipment, inventories, (and) good will when the values of such items are indeterminable.

(24) Sales of property, the value of which has been materially influenced by zoning changes where the latter are not reflected in current assessments.

(25) Transactions in which only 55¢ in revenue stamps are affixed to the conveyance unless the actual consideration has been determined.

(26) Sales which for some reason other than specified in the enumerated categories are not deemed to be

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transaction between a willing buyer and a willing seller.

(27) Sales occurring within the sampling period but prior to a change in assessment practice resulting from the completion of a recognized revaluation or reassessment program; *i.e.*, sales recorded during the period July 1 to December 31 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll.

The assessor's reports are forwarded to the Director of the Division of Taxation who reviews the reports and lists all the usable sales along with a ratio of assessed to true value. This list is sent to each assessor who is expected to check the accuracy of the list and object to any errors and to those sales included which do not reflect true value. From this list the director formulates a ratio of assessed to true value for each parcel, for each property class and the average for all classes.[2]

The New Jersey Supreme Court in *In re Appeals of Kents, supra,* used the Director's ratios to show assessment inequality.

> The question is whether the average ratio thus determined may be used to deal with the problem of intramunicipal inequality. If the sales data used to find the ratio in fact revealed some percentage of true value about which the bulk of individual assessments tended to cluster, one might accept that percentage as the common level of assessments. But the underlying sales material may reveal no such central figure, but rather widely varying assessment ratios within each of the four classes of property referred to above.

2. See *Seton Hall L. Rev.*, Vol 4:576-609 (1973) for a further explanation of the development of the ratios by the Director of the Division of Taxation.

> So, in the present case, the Director's Tables dated October 1, 1956 show an average ratio of 31.41% based upon sales of vacant land at prices ranging in ratio to assessed value from 2.25% to 88%; sales of residential property at ratios of 4.12% to 86%; and sales of "other" property at ratios from 5.13% to 79.38%. The Director's Tables dated October 1, 1957 show an average ratio of 31.40% on the basis of sales of vacant land ranging from 6% to 82.50%; residential property ranging from 4.21% to 64.77%; and "other" property ranging from 9.14% to 129.12%. Inspection of the sales data discloses no single ratio at which it can be said that real property was generally assessed for the years in question (34 N.J. at p. 27).

In the present case, the instant taxpayer used the sales ratio data to show the effect of the application of the base year revaluation figure in later years. Briefly, these ratios indicated the following:

a) for 1971 the sales of vacant land reflected a ratio of assessed value to true value of 23.55 percent; residential property, a ratio of 55.05 percent; and for commercial, industrial and other sales, a ratio of 72.23 percent.

b) for 1972 the sales of vacant land reflected a ratio of assessed to true value of 31.69 percent; residential property, a ratio of 56.54 percent; and for commercial, industrial and other sales, a ratio of 53.67 percent.

c) the average ratio for all classes of property for 1971 was 73.18 percent and for 1972, 61.91 percent.

As New Jersey law requires that all assessments be made as of October 1 of the pretax year (*N.J.S.A.* 54:4-23) the taxpayer must demonstrate the true value of its property as of that date. In the present case, the judge of the Division of Tax Appeals found that the taxpayer had failed to prove that the true value of one tract was other

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than as assessed and for the other tract the judge determined the true value of the property on appeal, the Appellate Division reversed the true value finding determined by the Division judge and stated:

> "From a careful examination of the entire record we determine that the true value of the improvements on the Ford tract for the tax years of 1971 and 1972 to be $3,669,400 and the land for said years to be $1,249,000 a total of $4,918,400" (Appendix F; Pa44).

In other words the Appellate Division found that the true value for the years in question were equal to the assessment.

In summary, between the judgments of the Division of Tax Appeals and of the Appellate Division of the Superior Court, there was a finding that the true value of the instant taxpayer's property was the same as the assessment. On the other hand, there was a showing that for 1971 and 1972 the sales of property in the taxing district reflected that on an average the assessments for 1971 were at 73 percent of true value and for 1972 were at 62 percent. Clearly, if the instant taxpayer is being assessed at its true value for 1971 and 1972 and the rest of the taxing district is being assessed at a level substantially less than true value, the instant taxpayer is bearing a substantially heavier tax burden than the rest of the district. The New Jersey Supreme Court found that this evidence was insufficient to prove discrimination and affirmed the decision of the Appellate Division of the Superior Court reversing the decision of the Division of Tax Appeals which found discrimination and reduced the taxpayer's assessments to the average ratio indicated by the sales study formulated by the Director of the Division of Tax Appeals as discussed above.

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Petitioner contends here that the evidence as to the various assessment ratios did prove discrimination. The Director's sales study amounts to an objective study of the sales made in a given taxing district. As stated in a note in *Harvard L. Rev.*, Vol. 75; 1374-1395 (1962):

> A system based on state determination of local assessment levels seems far preferable to a procedure requiring each successive litigant to shoulder the expense of proving the average ratio in his locality. Availability of accurate averages would free the courts from their dependence on the assessor's discretion and enable them to base their decisions on more objective standards (p. 1393).

To require the instant taxpayer to prove more than this is to deny it the equal protection guaranteed in the Fourteenth Amendment. *Hillsborough Township v. Cromwell, supra.*

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CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

WATERS, McPHERSON &
HUDZIN,
Attorneys for Petitioner

By: /s/ Kenneth D. McPherson
KENNETH D. McPHERSON

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APPENDIX

APPENDIX A

PETITIONS OF APPEAL TO THE BERGEN COUNTY BOARD OF TAXATION FOR 1971 AND 1972

To the Bergen County Board of Taxation

Your Petitioner Waters and McPherson, attorneys, residing at (P.O. Address) 32 Journal Square, Jersey City, N.J., respectfully shows that Petitioner is, or represents, the taxpayer of certain property situated in the tax district of Edgewater, County of Bergen, consisting of and known as Block No. 74, Lot No. 1, page line , 700 River Road.

TAXPAYER'S USE
Assessment From Tax Bill

at which assessment your petitioner is aggrieved, because the said assessment is in excess of the true value as of Oct. 1st, last.

LAND	313,900
BLDG.	2,613,600
TOTAL	2,927,500

PETITION FOR REDUCTION

Petitioner states that the said assessment should be reduced to the true value of the property, to wit:

LAND	200,000
BLDG.	800,000
TOTAL	1,000,000

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ADDITIONAL REASONS FOR REDUCTION
(type or print)

Said assessment is discriminatory and does not represent the true value of said property.

DATED: August 11, 1971.

KENNETH D. McPHERSON,
Attorney for Petitioner

BLEED THROUGH

To The Bergen County Board of Taxation

Your Petitioner Waters and McPherson, Attorney, residing at (P.O. Address) 32 Journal Square, Jersey City, N.J., respectfully shows that Petitioner is, or represents, the taxpayer of certain property situated in the taxing district of Edgewater, County of Bergen, consisting of and known as Block No. 85, Lot No. 7 page line , 309 River Road.

TAXPAYER'S USE
Assessment From Tax Bill

at which assessment your petitioner is aggrieved, because the said assessment is in excess of the true value as of Oct. 1st, last.

LAND	1,249,000
BLDG.	3,669,400
TOTAL	4,918,400

PETITION FOR REDUCTION

Petitioner states that the said assessment should be reduced to the true value of the property, to wit:

LAND	200,000
BLDG.	1,500,000
TOTAL	1,700,000

ADDITIONAL REASONS FOR REDUCTION
(type or print)

Said assessment is discriminatory and does not represent the true value of said property.

DATED: August 11, 1971.

KENNETH D. McPHERSON,
Attorney for Petitioner

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To The Bergen County Board of Taxation

Your Petitioner Waters, McPherson & Hudzin, Esqs., residing at (P.O. Address) 32 Journal Square, Jersey City, New Jersey, respectfully shows that Petitioner is, or represents, the taxpayer of certain property situated in the taxing district of Edgewater, County of Bergen, consisting of and known as Block No. 74, Lot No. 1, page , line , 70 River Road.

TAXPAYER'S USE
Assessment From Tax Bill

at which assessment your petitioner is aggrieved, because the said assessment is in excess of the true value of Oct. 1st, last.

LAND	313,900
BLDG.	2,613,600
TOTAL	2,927,500

PETITION FOR REDUCTION

Petitioner states that the said assessment should be reduced to the true value of the property, to wit:

LAND	200,000
BLDG.	800,000
TOTAL	1,000,000

ADDITIONAL REASONS FOR REDUCTION
(type or print)

Said assessment is discriminatory and does not represent the true value of said property.

DATED: August 9, 1972.

KENNETH D. McPHERSON,
Attorney for Petitioner

BLEED THROUGH

To The Bergen County Board of Taxation

Your Petitioner Waters, McPherson & Hudzin, attorneys, residing at (P.O. Address) 32 Journal Square, Jersey City, New Jersey, respectfully shows that Petitioner is, or represents, the taxpayer of certain property situated in the taxing district of Edgewater, County of Bergen, consisting of and known as Block No. 85, Lot No. 7, page , line , 309 River Road.

TAXPAYER'S USE
Assessment From Tax Bill

at which assessment your petitioner is aggrieved, because the said assessment is in excess of the true value as of Oct. 1st, last.

LAND	$1,249,000
BLDG.	3,669,400
TOTAL	4,918,400

PETITION FOR REDUCTION

Petitioner states that the said assessment should be reduced to the true value of the property, to wit:

LAND	$ 200,000
BLDG.	1,500,000
TOTAL	1,700,000

ADDITIONAL REASONS FOR REDUCTION
(type or print)

Said assessment is discriminatory and does not represent the true value of said property.

DATED: August 9, 1972.

/s/ Kenneth D. McPherson
KENNETH D. McPHERSON,
Attorney for Petitioner

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APPENDIX B

JUDGMENTS OF THE BERGEN COUNTY BOARD OF TAXATION FOR 1971 AND 1972

COUNTY OF BERGEN
STATE OF NEW JERSEY

BOARD OF TAXATION

I. DANTE LEODORI, Secretary of the Bergen County Board of Taxation, do hereby certify the annexed is a true copy of a judgment in the matter of

TRI-TERMINAL CORPORATION (2)
vs.
BOROUGH OF EDGEWATER

as the same is taken from and compared with the original filed in the office of the Bergen County Board of Taxation on the 10th day of November A.D. 1971, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board at Hackensack, this 10th day of November A.D. 1971.

/s/ Dante Leodori
Secretary

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APPEAL #7

BERGEN COUNTY BOARD OF TAXATION

JUDGMENT

TRI-TERMINAL CORPORATION,

Petitioner

vs.

BOROUGH OF EDGEWATER,

Respondent

Property location 700 River Rd., Block 74, Lot 1, 3, 9, Year 1971.

A duly verified petition of appeal having been filed with the Bergen County Board of Taxation, and said appeal having been heard and considered,

It is on this 10th day of November, Nineteen hundred and Seventy-one, ORDERED that final Judgment be made as follows:

ORIG. ASSESSMENT		COUNTY BOARD ACTION	
LAND	313,900	LAND	313,900
BUILDING	2,613,000	BUILDING	2,613,600
TOTAL	2,927,500	TOTAL	2,927,500

Attest: Dante Leodori, Secretary

BERGEN COUNTY BOARD OF TAXATION

BENJAMIN GREEN
SAMUEL P. BARTOLETTA
ARTHUR MINUSKIN
B. STRACHER

POOR COPY

APPEAL #12

BERGEN COUNTY BOARD OF TAXATION

JUDGMENT

TRI-TERMINAL CORPORATION,
Petitioner

vs.

BOROUGH OF EDGEWATER,
Respondent

Property Location 309 River Rd., Block 85, Lot 7, Year 1971.

A duly verified petition of appeal having been filed with the Bergen County Board of Taxation, and said appeal having been heard and considered,

It is on this 10th day of November, Nineteen hundred and Seventy-one, ORDERED that final judgment be made as follows:

ORIG. ASSESSMENT		COUNTY BOARD ACTION	
LAND	1,249,000	LAND	1,249,000
BUILDING	3,669,400	BUILDING	3,669,400
TOTAL	4,918,400	TOTAL	4,918,400

Attest: Dante Leodori, Secretary

BERGEN COUNTY BOARD OF TAXATION

BENJAMIN GREEN
SAMUEL P. BARTOLETTA
ARTHUR MINUSKIN
B. STRACHER

COUNTY OF BERGEN

STATE OF NEW JERSEY

BOARD OF TAXATION

I. DANTE LEODORI, Secretary of the Bergen County Board of Taxation, do hereby certify the annexed is a true copy of a judgment in the matter of

TRI-TERMINAL CORPORATION (2)

vs.

BOROUGH OF EDGEWATER

as the same is taken from and compared with the original filed in the office of the Bergen County Board of Taxation on the 11th day of September A.D. 1972, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board at Hackensack, this 11th day of September A.D. 1972.

/s/ Dante Leodori
Secretary

POOR COPY

APPEAL #13

BERGEN COUNTY BOARD OF TAXATION

JUDGMENT

TRI-TERMINAL CORPORATION,
Petitioner

vs.

BOROUGH OF EDGEWATER,
Respondent

Property Location 309 River Road, Block 85, Lot 7, Year 1972.

A duly verified petition of appeal having been filed with the Bergen County Board of Taxation, and said appeal having been heard and considered,

It is on this eleventh day of September Nineteen hundred and Seventy-two, ORDERED that final Judgment be made as follows:

ORIG. ASSESSMENT		COUNTY BOARD ACTION	
LAND	1,249,000	LAND	1,249,000
BUILDING	3,669,400	BUILDING	3,669,400
TOTAL	4,918,400	TOTAL	4,918,400

Attest: Dante Leodori, Secretary

BERGEN COUNTY BOARD OF TAXATION

SAMUEL P. BARTOLETTA
BERNARD STRACHER
BENJAMIN GREEN
ARTHUR MINUSKIN
ALFRED P. LEVIN

APPEAL #9

BERGEN COUNTY BOARD OF TAXATION

JUDGMENT

TRI-TERMINAL CORPORATION,
Petitioner

vs.

BOROUGH OF EDGEWATER,
Respondent

Property Location 700 River Road, Block 74, Lot 1, Year 1972.

A duly verified petition of appeal having been filed with the Bergen County Board of Taxation, and said appeal having been heard and considered,

It is on this Eleventh day of September, Nineteen hundred and Seventy-two, ORDERED that final Judgment be made as follows:

	ORIG. ASSESSMENT	COUNTY BOARD ACTION
LAND	313,900	313,900
BUILDING	2,613,600	2,613,600
TOTAL	2,927,500	2,927,500

Attest: Dante Leodori, Secretary

BERGEN COUNTY BOARD OF TAXATION

Samuel P. Bartoletta
Bernard Stracher
Benjamin Green
Arthur Minuskin
Alfred P. Levin

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APPENDIX C

PETITIONS OF APPEAL TO THE DIVISION OF TAX APPEALS, DEPARTMENT OF THE TREASURY, STATE OF NEW JERSEY, FOR 1971 AND 1972

Petitioner Tri-Terminal Corporation, residing at (P.O. address) c/o Waters & McPherson Esqs., 32 Jo. Square in the County of Hudson and State of New Jersey, is the owner of property in the taxing district of Edgewater, County of Bergen known as Block: 74 Lot: 1, 3, 9. St. or Ave: 700 River Road and more fully described on the Schedule annexed hereto and made a part hereof.

Said property was assessed for the year 1971 as follows:

Land	$ 313,900
Improvements	$2,613,600
Total	$2,927,500

By judgment of the Bergen County Board of Taxation said assessment was determined to be as follows:

Land	$ 313,900
Improvements	$2,613,600
Total	$2,927,500

Petitioner is dissatisfied with said judgment and prays that the said property be determined to have a true value of $2,000,000 and that the assessment thereon for 1971 be:

Land	$ 313,900
Improvements	$1,406,100
Total	$1,720,000

Petitioner has paid that portion of the taxes due and payable as to the property which is not in substantial controversy.

Dated: 12/10/71

By: /s/ Kenneth D. McPherson
KENNETH D. McPHERSON
Attorney-at-Law of New Jersey

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Complete information must be set forth on reverse side hereof pursuant to N.J.S.A. 54:2-39.

Appeals must be filed in the office of the Division of Tax Appeals, State House Annex, Trenton, N.J., on or before December 15th.

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DISCRIMINATION PLEADED

RIDER #1

That said assessment is illegal and erroneous and constitutes an unconstitutional assessment against it, in that according to a standard of value different from and higher than the standard used by the community in assessing other properties located in said community contrary to Article 8, Section 1, paragraph 1 of the Constitution of New Jersey 1947 and the 14th Amendment to the United States Constitution.

RIDER #2

And further prays that the said assessment at true value be further reduced to the same level and standard of value used in levying assessments on other properties in said taxing district.

Petitioner Tri-Terminal Corporation, residing at (P.O. address) c/o Waters & McPherson, Esqs. 32 Jo. Square in the County of Hudson and State of New Jersey, is the owner of property in the taxing district of Edgewater, County of Bergen, known as Block: 85 Lot: 7. St. or Ave: 309 River Road and more fully described on the Schedule annexed hereto and made a part hereof.

Said property was assessed for the year 1971 as follows:

Land	$1,249,000
Improvements	$3,669,400
Total	$4,918,400

By judgment of the Bergen County Board of Taxation said assessment was determined to be as follows:

Land	$1,249,000
Improvements	$3,669,400
Total	$4,918,400

Petitioner is dissatisfied with said judgment and prays that the said property be determined to have a true value of $4,500,000 and that the assessment thereon for 1971 be:

Land	$1,249,000
Improvements	$2,621,000
Total	$3,870,000

Petitioner has paid that portion of the taxes due and payable as to the property which is not in substantial controversy.

Dated: 12/10/71

By: /s/ Kenneth D. McPherson
KENNETH D. McPHERSON
Attorney-at-law of New Jersey

POOR COPY

Complete information must be set forth on reverse side hereof pursuant to N.J.S.A. 54:2-39.

Appeals must be filed in the Office of the Division of Tax Appeals, State House Annex, Trenton, N.J., on or before December 15th.

DISCRIMINATION PLEADED

RIDER #1

That said assessment is illegal and erroneous and constitutes an unconstitutional assessment against it, in that according to a standard of value different from and higher than the standard used by the community in assessing other properties located in said community contrary to Article 8, Section 1, paragraph 1 of the Constitution of New Jersey 1947 and the 14th Amendment to the United States Constitution.

RIDER #2

And further prays that the said assessment at true value be further reduced to the same level and standard of value used in levying assessments on other properties in said taxing district.

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Petitioner Tri Terminal Corporation, residing at (P.O. address) c/o Waters, McPherson & Hudzin Esqs., in the County of Bergen and State of New Jersey, is the owner of property in the taxing district of Edgewater, County of Bergen known as Block: 74 Lot: 1 St. or Ave: 700 River Road and more fully described on the Schedule annexed hereto and made a part hereof.

Said property was assessed for the year 1972 as follows:

Land	$ 313,900
Improvements	$2,613,600
Total	$2,927,500

By judgment of the Bergen County Board of Taxation said assessment was determined to be as follows:

Land	$ 313,900
Improvements	$2,613,600
Total	$2,927,500

Petitioner is dissatisfied with said judgment and prays that the said property be determined to have a true value of $800,000 and that the assessment thereon for 1972 be:

Land	$ 200,000
Improvements	$ 600,000
Total	$ 800,000

Petitioner has paid that portion of the taxes due and payable as to the property which is not in substantial controversy.

Dated: December 7, 1972

/s/ Kenneth D. McPherson
KENNETH D. McPHERSON
Attorney for Petitioner

Complete information must be set forth on reverse side hereof pursuant to N.J.S.A. 54:2-39.

Appeals must be filed in the Office of the Division of Tax Appeals, State House Annex, Trenton, N.J., on or before December 15th.

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DISCRIMINATION PLEADED

RIDER #1

That said assessment is illegal and erroneous and constitutes an unconstitutional assessment against it, in that according to a standard of value different from and higher than the standard used by the community in assessing other properties located in said community contrary to Article 8, Section 1, paragraph 1 of the Constitution of New Jersey 1947 and the 14th Amendment to the United States Constitution.

RIDER #2

And further prays that the said assessment at true value be further reduced to the same level and standard of value used in levying assessments on other properties in said taxing district.

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Petitioner Tri Terminal Corporation, residing at (P.O. address) c/o Waters, McPherson & Hudzin Esqs., in the County of Bergen and State of New Jersey, is the owner of property in the taxing district of Edgewater, County of Bergen known as Block 85, Lot 7, St. or Ave.: 309 River Rd. and more fully described on the Schedule annexed hereto and made a part hereof.

Said property was assessed for the year 1972 as follows:

Land	$1,249,000
Improvements	$3,669,400
Total	$4,918,400

By judgment of the Bergen County Board of Taxation said assessment was determined to be as follows:

Land	$1,249,000
Improvements	$3,669,400
Total	$4,918,400

Petitioner is dissatisfied with said judgment and prays that the said property be determined to have a true value of $3,000,000 and that the assessment thereon for 1972 be:

Land	$1,000,000
Improvements	$2,000,000
Total	$3,000,000

Petitioner has paid that portion of the taxes due and payable as to the able as to the property which is not in substantial controversy.

Dated: December 7, 1972.

/s/ Kenneth D. McPherson
KENNETH D. McPHERSON
Attorney for Petitioner

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Complete information must be set forth on reverse side hereof pursuant to N.J.S.A. 54:2-39.

Appeals must be filed in the Office of the Division of Tax Appeals, State House Annex, Trenton, N.J., on or before December 15th.

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DISCRIMINATION PLEADED

RIDER #1

That said assessment is illegal and erroneous and constitutes an unconstitutional assessment against it, in that according to a standard of value different from and higher than the standard used by the community in assessing other properties located in said community contrary to Article 8, Section 1, paragraph 1 of the Constitution of New Jersey 1947 and the 14th Amendment to the United States Constitution.

RIDER #2

And further prays that the said assessment at true value be further reduced to the same level and standard of value used in levying assessments on other properties in said taxing district.

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APPENDIX D

JUDGMENTS OF THE DIVISION OF TAX APPEALS FOR 1971 AND 1972 (ALCOA TRACT)

DATE OF HEARING: February 21, 1973

SAVINO, J.

APPEARANCES:

Kenneth McPherson, Esq.
For the Petitioner

James T. Murphy, Esq.
For the Respondent

Tax Years—1971 and 1972
Block 74—Lots 1, 3 and 9

		County
Land	$ 313,900.00	
Improvement	2,613,600.00	
Total	$2,927,500.00	Dismissed

Subject site is situated on westerly side of River Road bounded on the north by Russell Avenue, on the south by Vreeland Terrace and on the east by Undercliff Avenue. It contains 8.9 acres.

Building consist of 1,076,589 gross square feet, fire resistant, reinforced concrete and steel, one to ten stories, elevators, driveways, plumbing, heating and lighting. Formerly known as the Alcoa Building constructed between 1915 and 1920 and 1937 to 1940.

Present owner purchased in 1968 for $2,500,000.00 together with other properties involving liquidation of the assets of Aluminum Company of America.

William Stack, an expert appraiser, appeared for the Petitioner. He uses two approaches. A capitalization of income gave him a land value of $359,000.00 and building of $1,695,100.00 for a total of $2,054,100.00. He rounded off the two evaluations with a rounded $2,000,000.00.

Using the capitalization method an estimated gross annual income of $396,500.00 was offered. This was arrived at by presenting a main lease between the landlord and tenant for an annual rental of $500,000.00 to February 1976. Landlord is responsible for fire insurance, exterior repairs and taxes based on 1969 tax bill. All taxes in excess of that to be paid by tenant. A sub-lease was presented from tenant to sub-tenant at $200,000.00 a year. The main lease therefore would be $300,000.00 for 718,000 square feet reflecting $.42 per square foot. Applying this square foot rate to entire premises results in a rounded income of $396,500.00.

A vacancy factor was then applied at 15% for $59,475.00 giving an estimated gross of $337,025.00. This, with added taxes of $12,300.00 gave $349,325.00. Operating expenses were listed at $38,960.00 for a net of $310,365.00 Using a land value of $359,000.00 (assessment is $313,900.00) for a 7.5 return and a 1.8 tax rate (2.72 x 67.55) for 9.3 resulting in $33,387.00 or for land deducted from net gives $276,978.00 for building. This was capitalized with a 9.5 return and 5% recapture plus tax of 1.84 for 16.34 giving a building value of $1,695,100.00 or total of $2,054,100.00.

On market data four sales were submitted. All of them were in Hudson County. Two were in Jersey City, one in Hoboken and last in Harrison. They reflected sales running from .097 per square foot to 2.06. Very little detail was offered as to description of properties such as special use, location, etc.

Neither party offered evidence or argument on the great difference in taxes between Bergen and Hudson County that would certainly reflect itself on the market values of comparable properties. The Court will nonetheless take this in consideration together with the lack of more complete details of the comparison of property to dispose of the market data approach as being inadequate.

Richard S. Wesser, Vice-President of Associated Survey Co., an appraisal firm, testified for the municipality.

He stated that he could not find any true comparable sales to subject property and based his appraisal on the cost and income approaches. His final conclusion was a value of $3,030,200.00.

A very short presentation was made on the cost approach. Using the N.J. Assessor Manual, Marshall-Stevens and Boeckh's manuals he arrived at the following figures: Replacement value, new, $23,255,066.00, physical value $10,563,181.00 and sound value $2,716,300.00. The sound value was based on 3.001 per square foot depreciated at 88.32 per cent.

This approach was so skimpy in detail and so little interest in it shown by the litigants that it will be disregarded.

Mr. Wesser based his gross income estimate on comparative rental data submitted in an addenda to his written appraisal. By using a guide line based on 1.00 per square foot plus or minus 0.40 per square foot for each foot of clearance height over and under 16 feet for the first 3 floors and 0.50 per square foot for floors above a total of $861,000.00 resulted.

A vacancy factor of 15% was applied giving an effective income stabilized at $731,850.00. He listed $161,007.00 for expenses for a balance of $570,843.00. Land assessed at $313,900.00 was capitalized at 0.1067 for $33,493.00,

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the building at $537,350.00 was capitalized at 0.1467 for $3,662,978.00 indicating a total of $3,976,818.00. Capitalization rates were: Land 8.00 return, 2.67 taxes. Building 8.00 return, 2.67 taxes and recapture of 4%.

A review of the industrial rental rate study that is used to support a base rate of 1.00 per square foot for first 3 floors and 0.04 per square foot plus or minus for each foot above 16 feet show sample building of one-story type of only 3,200 square feet at 1.50 per square foot. Another building, old and in poor condition, 131,418 square feet at 0.410 per square foot. Another is a trucking terminal of identical square feet is second example at 0.548 per square foot. The comparative rents are too vague to be considered.

The income of the taxpayer as rental for his property that is the basis of its case came under effective cross-examination by Mr. Murphy.

Mr. Stack gave weak answers when he was asked how a $500,000.00 lease could be reduced to $300,000.00. The question of the sub-leases between the principal parties led this Court to believe that a series of paper movements was made to hide the true income of the buildings. For example, in answer to a question as to the witnesses knowledge of any other income his answer was: "The only income information I obtained was the income information that was derived from the property from the tenant to the landlord. Any revenue derived by the tenant from any possible subleases, if there were any, I did not consider a factor in determining the market value of the property."

Since the landlord and the tenant were the same people the whole matter gets a little murky. I shall have to disregard the economic evaluation of the petitioner because of my lack of confidence that all the facts were presented.

The judgment of this Court is that the cause of action on true value be dismissed.

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The petitioner also charges discrimination in his complaint.

Owen J. Sheeran, Municipal Assessor, was called as a witness for the taxpayer. Upon examination Mr. Sheeran insisted that he assessed at true value but used tax year 1968, the year the municipality had a revaluation, as a base. It was his testimony that if a new home was built in 1970 he would use the N.J. Manual to reach a value and then revert it to the 1968 base. In reply to the question "How can you say you are assessing at 100% live value when you are using 1968 as a base?" He replied he did not know.

Introduced into evidence was the Director's Table of 1971 using 34 sales showed an average of 73.18 the sale ranging from 23.55% to 108.70%.

For year 1972 17 sales showed an average ratio of 61.91%. The sales ranged from 25.50% to 68.41%.

It was incumbent upon the municipality to prove that some common level was used in the assessments. The assessor failed to offer any such proof but merely stated that all assessments such as new ones were reverted to the 1968 base.

A review of the sales in the Director's Table reveal such a wide variance that the implication of no common level cannot be avoided. Since there is a consolidation of two cases here and two tax years, 1970-1971, and it was stipulated that the testimony in each case would apply to the other Court will accept Mr. Stack's stabilization of the Director Ratio for two years at 67.55. Applying this ratio to the determination of true value above the judgment of this Court is that the property be assessed as follows:

Land	$ 313,900.00
Building	1,220,092.29
Total	$1,533,992.29

Carmine F. Savino, Jr.

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APPENDIX E

JUDGMENTS OF THE DIVISION OF TAX APPEALS FOR 1971 AND 1972 (FORD TRACT)

DATE OF HEARING: February 21, 1973

SAVINO, J.

APPEARANCES:

Kenneth McPherson, Esq.
For the Petitioner

James T. Murphy, Esq.
For the Respondent

Tax Years—1971 and 1972
Block 85—Lot 7

		County
Land	$1,249,000.00	
Improvement	3,669,400.00	
Total	$4,918,400.00	Dismissed

The parties stipulate that testimony as to charge of discrimination as made here will be same as prior Case No. 103 and for that reason the charge will be renewed in accordance with opinion in that case.

This property consists of 37.35 acres situated on River Road. Ten of the acres are under the water of the Hudson River. The site is improved with two (2) story building of masonry and steel construction about 40 years old and containing 897,000 square feet of rentable floor area. Office space occupies 35,000 square feet. There are eight other improvements involved such as pump house, oil house, water tank tower, etc.

William J. Stack appeared for petitioner. He outlined a capitalization of income by offering an estimate gross

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annual income of $1,186,600.00 less vacancy factor of 20% for effective income of $949,280.00. He listed $289,582.00 in expenses, a little less than 30%, for a net income of $543,-541.00. He listed a 7.5 return on land and an adjusted tax rate of 1.8 for 9.3 giving $116,157.00. Improvement was given a 9.00 return, recapture of 3.30 and tax of 1.84 for 14.14 resulting in $3,774,500.00 for building which added to land at $1,249,000.00 (the assessed amount) for a total of $5,023,500.00.

On his comparable approach Mr. Stack listed a sale in Jersey City together with those listed in Case No. 103 resulting in an indicated true value of $4,730,000.00.

The subject property was purchased in 1961 for $4,000,-000.00.

Richard S. Wesser, an expert appraiser, testified for the respondent. He evaluated the property by the cost replacement and the economic approach.

On the cost approach a new replacement value of $17,-686,338.00 was made. He gave it a physical value of $9,-991,627.00 and a sound value of $3,669,400.00.

Mr. Wesser capitalized the building income with an estimated gross total of $900,000.00. He allowed a 10% vacancy for an effective net of $810,000.00. He stabilized expenses at $194,400.00 (24%) for a net of $615,600.00. He capitalized land value at $1,249,000.00 at 7.5 return and 2.67 taxes for 10.17 or $127,023.00. The building residual of $488,577.00 was capitalized by adding 3% recapture for 13.17 or $3,709,772.00. Add land of $1,249,000.00 for a total of $4,958,772.00.

On cross-examination Mr. Wesser admitted having no data available to substantiate his cost approach. Although referring to several standard guides he gave an unsatisfac-

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tory explanation on how he arrived at his figures. On his economic approach Mr. Wesser admitted that the amounts appearing in his appraisal were out of date and another statement that had been used before the County Board (P-4) was more accurate. This document listed a different set of figures and the witnesses responses to cross-examination rendered his report most unsatisfactory.

Very little was offered on a market data approach. The testimony of both experts was insufficient to prove the evaluation they attempted to make.

The Court will cull information from both appraisals to reach a conclusion of its own. The 1970 actual income of $799,595.44 will be added to the 1971 income of $807,621.99 and will be divided to reach an average income of $803,600.00 rounded.

From the list of expenses in Mr. Stack's report the 5% for repairs and management and 2% for legal and accounting will be cut in half as a more realistic approach. These three items were estimates, the others were actual. This would give a total of $237,625.00 for expenses that is less than the customary 30%.

Capitalization follows:

Net Income			$ 566,000.00
Land—100% value		$1,249,000.00	
Return	7.50		
Tax Factor	2.72		
	10.22	or	57,845.00
Net Income applicable to building			508,155.00
Return	7.50		
Tax Factor	2.72		
Depreciation	3.00		
	13.22	or	$3,315,832.00

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Land	$1,249,000.00
Building	3,315,832.00
Total	$4,564,832.00

The petitioner charges discrimination in his complaint.

Owen J. Sheeran, Municipal Assessor, was called as a witness for the taxpayer. Upon examination Mr. Sheeran insisted that he assessed at true value but used tax year 1968, the year the municipality had a revaluation, as a base. It was his testimony that if a new home was built in 1970 he would use the N.J. Manual to reach a value and then revert it to the 1968 base. In reply to the question "How can you say you are assessing at 100% live value when you are using 1968 as a base?" He replied, he did not know.

Introduced into evidence was the Director's Table of 1971 using 34 sales showed an average of 73.18, the sale ranging from 23.55% to 108.70%.

For year 1972 17 sales showed an average ratio of 61.91%. The sales ranged from 27.50% to 68.41%.

It was incumbent upon the municipality to prove that some common level was used in the assessments. The assessor failed to offer any such proof but merely stated that all assessments such as new ones were revaluated to the 1968 tax base.

A review of the sales in the Director's Table reveal such a wide variance that the implication of no common level cannot be avoided. Since there is a consolidation of two cases here and two tax years, 1970-1971, and it was stipulated that the testimony in each case would apply to the other the Court will accept Mr. Stack's stabilization of the Director Ratio for two years at 67.55. Applying this ratio to the determination of true value above the judgment of this Court is that the property be assessed as follows:

Land	$1,249,000.00
Building	1,851,000.00
Total	$3,100,000.00

Carmine Savino, Jr.

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APPENDIX F

OPINION OF THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

Argued: October 21, 1974—Decided February 21, 1975.

Before Judges Michels, Morgan and Kentz.

On appeal from Division of Tax Appeals.

Mr. William C. Meehan argued the cause for appellant (Messrs. Contant, Contant & Meehan, attorneys).

Mr. Kenneth D. McPherson argued the cause for respondent (Messrs. Waters, McPherson & Hudzin, attorneys).

The opinion of the court was delivered by MICHELS, J.A.D.

The Borough of Edgewater (Borough) appeals from judgments of the Division of Tax Appeals (Division) reducing the 1971 and 1972 assessments upon two parcels of improved property owned by Tri-Terminal Corporation (Tri-Terminal). We consolidated these appeals.

THE ALCOA TRACT

The parcel designated as Block 74, Lots 1, 3 and 4 (hereinafter referred to as the Alcoa Tract), consists of 8.9 acres of land which are situated buildings containing 1,076,589 gross square feet of space. The buildings are fire resistant reinforced concrete and steel and range from one to ten stories high. They were constructed between 1915 and 1920 and between 1937 and 1940 and were part of the Aluminum Company of America's Edgewater complex. Tri-Terminal purchased this property, together with an 11 acre tract not the subject of appeal, for $2,500,000 at a liquidation sale of Alcoa's assets in 1968.

The Borough assessed the land and buildings for the years 1971 and 1972 as follows:

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Land	$ 313,900.00
Improvements	2,613,600.00
	$2,927,500.00

Tri-Terminal appealed to the Bergen County Board of Taxation which dismissed the appeal and affirmed the assessment. Tri-Terminal then appealed to the Division challenging the true value of the improvements and alleging discrimination in the assessment. The Division dismissed the cause of action on true value but found that the Borough had failed to prove that a common level had been used in assessing property in the municipality and applied the average ratio from the Director's Tables for the years 1971 and 1972 to the true value, reducing the assessment to the following:

Land	$ 313,900.00
Improvements	1,220,092.29
	$1,533,992.29

THE FORD TRACT

This parcel designated as Block 85, Lot 7 (hereinafter referred to as the Ford Tract), consists of 37.35 acres, ten of which are under the water of the Hudson River. The parcel is improved with a two-story building constructed about 40 years ago of masonry and steel with 897,000 square feet of rentable floor space as well as eight other buildings. Tri-Terminal purchased this parcel together with the improvements thereon in 1961 for $4,000,000.

The Borough assessed the land and improvements for years 1971 and 1972 as follows:

Land	$1,249,000.00
Improvements	3,669,400.00
	$4,918,400.00

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Tri-Terminal appealed to the Bergen County Board of Taxation which dismissed the appeal and affirmed the assessment. Tri-Terminal then appealed to the Division, again challenging the true value of the improvements and alleging discrimination in the assessment. The Division rejected the testimony as to true value offered by both the Borough and Tri-Terminal and determined the true value of the improvements to be $3,315,832 by essentially capitalizing the average rental income for the years 1970 and 1971 The Division then applied the average ratio from the Director's Tables for 1971 and 1972 to its finding as to true value, assessing the property as follows:

Land	$1,249,000.00
Improvements	1,851,000.00
	$3,100,000.00

On this appeal, the Borough contends that the judgments entered below by the Division should be reversed and the original assessments of the Alcoa and Ford tracts for both 1971 and 1972 be reinstated. The Borough argues that (1) the Diivsion erred in concluding that it failed to use a common level in assessing property in the municipality and discriminated against Tri-Terminal in the assessment of the Alcoa and Ford Tracts, and (2) the Division's determination of the true value of the Ford tract was against the weight of the evidence.

COMMON LEVEL OF ASSESSMENT

Art. VIII, §I, par. 1(a), of the 1947 New Jersey Constitution provides in pertinent part:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, * * *.

The dominant principle of this constitutional mandate is equality of tax treatment and burden. *Baldwin Const. Co. v. Essex County Bd. of Taxation*, 16 N.J. 329, 340 (1954). The preeminent consideration in the assessment of taxes is the achievement of equality and the elimination of discrimination. To this end *N.J.S.A.* 54:3-13 commands the county board to "secure the taxation of all property * * * at its taxable value as prescribed by law, in order that all property * * * shall bear its full and just share of taxes." *N.J.S.A.* 54:4-2.25 requires that "[a]ll real property subject to assessment and taxation for local use shall be assessed according to the same standard of value, which shall be the true value of such real property * * *." Thus, where a common level of assessment is utilized, there is an assessment according to the same standard of values as mandated by our *Constitution*. See *In re Appeals of Kents, 2124 Atlantic Avenue, Inc.*, 34 N.J. 21, 26, 29-31 (1961); *Feder, et al. v. City of Passaic*, 105 N.J. Super. 157, 161 (App. Div. 1969). *Cf. Continental Paper Co. v. Vil. Ridgefield Pk.*, 122 N.J. Super. 446, 450-451 (App. Div. 1973), *certif. den.* 63 N.J. 328 (1973).

The Division, in finding that the Borough had failed to prove that a common level was used in assessing property in the municipality, stated in part:

> It was incumbent upon the municipality to prove that some common level was used in the assessments. The assessor failed to offer any such proof but merely stated that all assessments such as new ones were reverted to the 1968 base.
>
> A review of the sales in the Director's Table reveal such a wide variance that the implication of no common level cannot be avoided. Since there is a consolidation of two cases here and two tax years, 1970-1971

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[sic], and it was stipulated that the testimony in each case would apply to the other Court will accept Mr. Stack's stabilization of the Director Ratio for two years at 67.55. • • •

Our study of the record below fails to reveal any evidential support for the finding by the Division that the Borough did not assess the properties in the municipality at a common level. The evidence is uncontradicted that in 1968 all properties of the Borough were revalued by an independent consulting firm. All properties, including the Alcoa and Ford tracts, were assessed in 1969 at 100% of the true value determined by said revaluation. Thereafter the Borough continued to assess all properties on the same basis for the years 1970, 1971 and 1972.[1] The Borough Assessor testified that he assessed all new ratables built during 1971 and 1972 on the basis of construction costs in 1968 and at 100% of the land value as established by the revaluation in 1968. The record does not reveal that Tri-Terminal's property was assessed in 1971 or 1972 on any basis other than at 100% of true value as determined by the 1968 revaluation.

Thus, we are satisfied that the Division's finding that there was not a common level of assessment has insufficient evidential support. On the contrary, all property in the Borough was assessed at a common level for the years in question. *Cf., In re Appeals of Kents, supra,* 30-31; *Feder, et al. v. City of Passaic, supra,* 161.

Furthermore, Tri-Terminal failed to sustain its burden of proving that the assessments were discriminatory. In *Continental Paper Co. v. Vil. Ridgefield Pk., supra,* at 450-

1. We were advised by counsel at oral argument that the Borough again revalued all the property in the municipality in 1974, and on the basis of the new valuation assessed the land and improvements of the Alcoa Tract at $5,927,600 and land and improvements of the Ford Tract at $10,895,100.

451, the court discussed the elements required to be proven in order to successfully attack an assessment as being discriminatory:

> In order to make out a case of actionable discrimination, these elements must be proved: (1) that the real property generally in the municipality was assessed at less than true value; (2) what the common assessment level was, and (3) the true value of the subject property upon which the common level precentage would operate. *Reading Co. v. Woodbridge Tp.*, 45 N.J. 407, 426 (1965); *Matawan v. Tree Haven Apt., Inc., supra,* 108 N.J. Super. at 116; *Feder v. Passaic,* 105 N.J. Super. 157, 160 (App. Div. 1969). If there is *no* common level shown and there *is none which the assessor is endeavoring to apply,* and the assessment is substantially higher than the "average ratio" determined by the Director of Taxation, the "average ratio" may be applied under *Kents,* and the assessment reduced by that proportion. *Matawan v. Tree Haven Apts., Inc., supra,* 108 N.J. Super. at 116; *Feder v. City of Passaic, supra,* 105 N.J. Super. at 166.

Reversing the judgment of the Division insofar as it reduced the assessment for reasons of discrimination, the court stated at 451:

> There is no evidential support in the record for so much of this finding as concerns assessment at a common level less than 100%. Indeed, there was no testimony by taxpayers' experts as to a common level, and the assessor's uncontroverted testimony is that for his 12 years as assessor he has been assessing at true value.
>
> Nor was there any showing that, as in *Kents,* there was no common level, toward the end that the average ratio from the Director's Tables might be enlisted.

> The Division erred in equating the "average ratio," accepted by the assessor in his testimony for what is and no more, with a "common level."

and at 455:

> • • • In 1963 a revaluation was made in Ridgefield Park. The assessor's testimony here was that, while the assessments remained the same through 1970, they were "uniform" throughout the municipality. There was an effort by the assessor to maintain assessments at a common level of true value and a revaluation was again made for the tax year 1971. Moreover, the Division here gave no consideration to the inherent value of the "average ratio" in Ridgefield Park, or its possible weaknesses. Nor was there any showing that the assessment of the subject property was "substantially" higher than the "great bulk" of assessments in the municipality. Uniformity is the desideratum, inequality of tax treatment the evil to be prevented. There is no evidence in the record here to negate the former or to demonstrate the latter. The true thrust of *Kents* is at "unequal treatment" (34 N.J. at 31). We find none of that here.

Here, the record amply demonstrates that all property in the Borough was assessed at a common level in 1971 and 1972 at 100% of true value as established by the revaluation in the base year 1968. Consequently, there was no discrimination in the assessment of the Tri-Terminal properties. The error that the Division made in the Continental case, *supra*, in equating average ratio with common level was made by the Division in this case as well. The court's holding in that case is, therefore, equally applicable here.

TRUE VALUE OF FORD TRACT

With respect to the Borough's contention that the Division's determination of the true value of the Ford Tract was contrary to the weight of the evidence, we observe at the outset that in determining the true value of the land, the Division accepted the original assessment of the land ($1,249,000) as did all the experts present. However, in determining the true value of the improvements, the Division rejected expert testimony presented by both Tri-Terminal and the Borough, making an independent determination by merely capitalizing the average actual rental income for the building for the years 1970 and 1971.

The original assessment of the improvements by the Borough for the years 1971 and 1972 was $3,669,400.00. Affirmed by the County Board of Taxation, that valuation was presumptively valid. Tri-Terminal, therefore, had the burden of proving the County Tax Board Judgment invalid. See *Transcontinental Gas Pipeline v. Tp. of Bernards*, 115 N.J. Super. 593, 596 (App. Div. 1970), *aff'd* 58 N.J. 585 (1971); *Glenwood Realty Co., Inc. v. East Orange*, 78 N.J. Super. 67, 70 (App. Div. 1963); *Passaic v. Botany Mills*, 72 N.J. Super. 449, 453-454 (App. Div. 1962), *certif. den.* 37 N.J. 231 (1962).

William J. Stack, who appeared on behalf of Tri-Terminal, testified that by using an income capitalization approach to value the improvements of the Ford Tract, he found that they had a value for the years in question of $3,774,500, which, together with the value of the land of $1,249,000, totalled $5,023,500. Specifically, he reviewed the leases and rental data supplied by Tri-Terminal, concluding therefrom that the estimated gross income from the available rental area was $1,086,600. He then applied a vacancy factor of 20%, thereby reducing the effective gross income to $949,280 from which he further deducted the

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actual operating costs and other estimated costs such as repairs and management, legal and accounting fees resulting in a net income of $543,541. He capitalized this figure in accordance with accepted methods producing a total true value for 1971 and 1972 of $5,023,500. However, his final estimate of true value was obtained by applying a market data approach. Relying upon a sale in Jersey City which he contended was comparable, he concluded that the improvements had a true value of $3,501,000, which when added to the land value produced a total market value of $4,750,000. The Division rejected this figure because the market data employed was inadequate and not comparable, with which we agree.

Mr. Richard S. Nesser, who made the 1968 revaluation for the Borough, testified that the true value of the land was $1,249,000 and of the improvements $3,669,400, for a total true value of $4,918,400. In valuing the improvements, he used a replacement cost, less depreciation, approach as well as an income capitalization one. With respect to the latter, he estimated rental income at $900,000. He then applied a 10% vacancy factor, thereby reducing the effective gross income to $810,000, from which he deducted expenses based on 1969 information, arriving at a net income of $615,600. He capitalized the net income producing a true value of $3,669,400. During cross-examination Nesser testified that his estimate was bound by the base year of 1968, but that if he were appraising the property as of October 1, 1970, he would have to give serious consideration to a value of $5,600,000, and if he were appraising it as of October 1, 1971, to $6,200.000. It was his opinion that since 1961 when the property was purchased for $4,000,000 (which he felt represented true value at the time), rental rates had increased and that that increase would effect an increase in the over-all value of property.

The scope of appellate review of judgments of administrative agencies such as the Division of Tax Appeals is well defined. The "substantial evidence" rule requires that we not disturb a judgment of the Division unless it is unsupported by sufficient credible evidence. See *Transcontinental Gas Pipeline v. Tp. of Bernards, supra,* 596-597; *In re Appeal of the City of East Orange,* 103 N.J. Super. 109, 113-114 (App. Div. 1968); *Glenwood Realty Co., Inc. v. East Orange, supra,* 73; *Passaic v. Botany Mills, supra,* 454. The performance of our appellate function is more fully delineated by the following language from Justice Hall's opinion in *State v. Johnson,* 42 N.J. 146 (1964):

> But if the appellate tribunal is thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction * * *, then, and only then, it should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions. While this feeling of "wrongness" is difficult to define, because it involves the reaction of trained judges in the light of their judicial and human experience, it can well be said that that which must exist in the reviewing mind is a definite conviction that the judge went so wide of the mark, a mistake must have been made. This sense of "wrongness" can arise in numerous ways—from manifest lack of inherently credible evidence to support the finding, obvious overlooking or underevaluation of crucial evidence, a clearly unjust result, and many others. This, then, is when and how the permissive power of *R.R.* 1:5-4(b) should be utilized by the first appellate tribunal and is what our prior cases mean no matter how they have expressed it. [*Id.,* at 162.]

Our study of the record satisfies us that with respect to the true value of the improvements on the Ford Tract, the finding of the judge below is not supported by sufficient evidence. Tri-Terminal purchased the Ford Tract in 1961 —ten years earlier—for $4,000,000. In 1968 an independent consulting firm revalued the Borough and determined the true value of the Tract to be $4,918,400. Both the 1971 and 1972 assessments based true value on 100% of the value determined by the 1968 revaluation. None of the acceptable expert opinions valued the property at less than $4,-918,400. In fact, Tri-Terminal's own expert, on the basis of an income capitalization approach, reached a value of $5,023,500. Thus, we hold a "definite conviction that the judge went so wide of the mark, a mistake must have been made." See *In re Fifteen Registered Voters, Cty. of Sussex*, 129 N.J. Super. 296, 303 (App. Div. 1974), *certif. den.* — N.J. — (1974). We therefore reverse the finding of the Division as to the true value of the improvements of the Ford Tract for 1971 and 1972.

Inasmuch as the case has been fully tried in the Division, and since we are convinced that the finding of the Division as to true value of the improvements of the Ford Tract at $3,315,832 is erroneous, we have decided to make our own finding of the true value of such improvements for the years 1971 and 1972 in order to finally determine the matters raised by these consolidated appeals *R.* 2:10-5 *Cf. Rek Investment Co. v. Newark*, 80 N.J. Super. 552, 562 (App. Div. 1963).

From a careful examination of the entire record, we determine that the true value of the improvements on the Ford Tract for the tax years of 1971 and 1972 to be $3,669,-400 and the land for said years to be $1,249,000, a total of $4,918,400.

The evidence supporting this valuation is overwhelming. In 1968 all property in the Borough, including the Ford Tract, wes revalued by an independent consulting firm, which determined the true value of the land to be $1,249,-000 and the improvements to be $3,669,400 The Ford Tract, as well as all other properties in the Borough, was assessed in 1969, at 100% of true value as determined by the 1968 revaluation. In 1971 and 1972 the Borough continued to assess all properties, including the Ford Tract, on this same basis. Moreover, the property was purchased in 1961 for $4,000,000, which Nesser testified represented the true value of the tract at the time. The rental rates for such property having increased since 1961, a corresponding increase in the over-all value of the property would be expected. Thus, Nesser's opinion of value, which we find to be credible and convincing, and Stack's opinion of value based on the income capitalization approach, when viewed in the light of all other evidence, compels the conclusion that the reasonable value of the tract for the years in question was $4,918,400.

TRUE VALUE OF ALCOA TRACT

We have also considered Tri-Terminal's argument that the Division erred in dismissing its appeal as to the true value of the Alcoa Tract and find it without merit. There was ample evidence to support a finding that Tri-Terminal did not satisfy its burden of establishing that the true value was different from the 1971 and 1972 assessments in question. The Division therefore properly dismissed the appeal as to the true value of the Alcoa Tract.

CONCLUSION

For the reasons set forth above the judgments of the Division determining the assessed value of the Alcoa and Ford Tracts for 1971 and 1972 are reversed. The true value

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of the Ford Tract is determined and declared to be $1,249,-000 for the land, and $3,669,400 for improvements, for a total of $4,918,400. The assessments of both the Alcoa and Ford Tracts for 1971 and 1972 originally made by the Borough are reinstated, and the matters are remanded for entry of judgments in the Division in accordance with the views herein expressed.

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/s/ Elizabeth McLaughlin
Clerk

APPENDIX G

ORDER OF THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY
(Filed March 11, 1975)

Moving papers filed March 3, 1975.

Date submitted to Court March 5, 1975.

Date decided March 7, 1975.

ORDER

This matter having been duly presented to the Court, it is hereby ordered as follows:
Petition for Rehearing denied.

SUPPLEMENTAL:

FOR THE COURT:

/s/ Herman D. Michels
HERMAN D. MICHELS
P.J.A.D.

Witness, the Honorable Herman D. Michels, Presiding Judge of Part B, Superior Court of New Jersey, Appellate Division, this 7th day of March, 1975.

/s/ Elizabeth McLaughlin
ELIZABETH McLAUGHLIN
Clerk of the Appellate Division

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Elizabeth McLaughlin
ELIZABETH McLAUGHLIN
Clerk

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APPENDIX H

GRANT OF PETITION OF CERTIFICATION BY THE SUPREME COURT OF THE STATE OF NEW JERSEY

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is granted.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 4th day of June, 1975.

/s/ Florence R. Peskoe
FLORENCE R. PESKOE
Clerk

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/s/ Florence R. Peskoe
FLORENCE R. PESKOE
Clerk

APPENDIX I

OPINION OF THE SUPREME COURT OF THE STATE OF NEW JERSEY

Argued September 23, 1975; Decided October 20, 1975.

On certification to the Superior Court, Appellate Division.

Mr. Kenneth D. McPherson argued the cause for petitioner-appellant (*Messrs. Waters, McPherson and Hudzin*, attorneys).

Mr. William C. Meehan argued the cause for respondent-respondent (*Messrs. Contant, Contant & Meehan*, attorneys).

The opinion of the Court was delivered by CONFORD, P.J.A.D., temporarily assigned.

These are tax cases involving real property of an industrial nature and concern assessments for the tax years 1971 and 1972. As narrowed on the presentation to this Court, the issue of excessiveness of the assessments above true value is not raised, but only alleged discrimination by the assessor in valuing these parcels for assessment purposes. The prime question before us is whether the discrimination remedy sanctioned by this Court in *In re Appeal of Kents 2124 Atlantic Ave., Inc.*, 34 N.J. 21 (1961), is appropriate where a municipality has adopted a practice of regular periodic revaluations for assessments.

Two improved parcels of property are involved. They may be referred to as the Alcoa tract and the Ford tract. The details of the physical status of the properties are not material to the single issue presented. The Alcoa tract

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assessments for both years (assessing dates being, respectively, October 1, 1970 and October 1, 1971) were:

Land	$ 213,900
Improvements	2,613,600
Total	$2,927,500

The Ford tract assessments for those years were:

Land	$1,249,000
Improvements	3,669,400
Total	$4,918,400

The testimony in the case establishes that these assessments represent substantially the result of a revaluation of all assessed properties in the municipality by an independent appraisal firm, with the concurrence of the assessor, put into effect for the tax year 1969 as of October 1, 1968. The revaluation had been ordered by the Bergen County Board of Taxation. See *Bergen Cty. Bd. of Tax v. Bor. of Bogota,* 114 N.J. Super. 140, 144-145 (App. Div. 1971). Except for new construction, all assessments, including those here involved, have been carried forward intact from the 1969 revaluation year through the tax years 1971 and 1972.[1] New construction was assessed at 1969 values.

The taxpayer filed appeals from the assessments for both tax years 1971 and 1972 with the Bergen County Board of Taxation which affirmed the assessments. Appeals from those judgments were taken to the Division of Tax Appeals on both true value and discrimination grounds. The cases were tried together before the Division.

On the Alcoa tract, the Division found that the true value claim had not been substantiated by the taxpayer

1. There has been a new independent revaluation as of October 1, 1973 for the tax year 1974. The 1974 assessments based thereon are $5,927,600 for the Alcoa tract and $10,895,100 for the Ford tract.

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and dismissed it. On the discrimination phase of the case the Division reasoned that it was incumbent on the municipality to establish "some common level" in the municipal assessments generally and that it had not done so. It was consequently held, apparently pursuant to the rule of the *Kents* case, *supra*, that the arithmetic average of the two average ratios reflected for the years 1971 and 1972 by the sales studies of the Director of the Division of Taxation—being 67.55—should be applied as a percentage to the "determination of true value", *i.e.*, the assessed valuation. This resulted in judgments reducing the assessment of the property to

Land	$ 313,900.00
Improvements	1,220,092.29
Total [2]	$1,533,992.29

On the Ford tract, the Division rejected the conclusions as to true value offered by the expert witnesses on both sides and made its own determination of the true value of the improvements, fixing the amount thereof at $3,315,832. Adding that sum to the unchanged land assessment produced a Division true value total of $4,564,832. On the same rationale as used by it in the discrimination phase of the Alcoa tract appeal, the Division applied the average of the Director's ratios aforementioned (67.55) to the determined true value and fixed the assessment of the Ford tract for the years in question at (in rounded figures):

Land	$1,239,000
Improvements	1,851,000
Total	$3,100,000

The municipality appealed the judgments of the Division to the Appellate Division. There was no cross-appeal by

2. The Division's calculation is incorrect. Application of the stated percentage should have resulted in a total assessment of $1,977,526. In the light of our determination of the appeal, the error is not material.

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the taxpayer. The Appellate Division held that the Division of Tax Appeals erred in finding that there was no common level of assessment in Edgewater for the years in question and in applying the Director's ratios to give discrimination relief. The court ruled that the uniform assessment of all properties at 100% of their true value as determined by the October 1, 1968 revaluation constituted a common level for purposes of meeting a discrimination appeal. We are in essential accord with that holding, for reasons to be further explicated hereinafter.

On the true value phase of the case the court analyzed the proofs and concluded that the Division's determination of true value of the improvements on the Ford tract was not supported by sufficient evidence. The court exercised its own fact-finding jurisdiction, determined that the true value of the Ford tract was, for both tax years, the same as the assessments, and restored the original assessments on both tracts for the tax years involved. We granted certification. 68 N.J. 155 (1975). No issue is raised before us by the taxpayer as to the true value aspect of the decision of the Appellate Division, and we shall consequently not discuss it save as it may be incidentally relevant to the discrimination issue.

It is fundamental that a taxpayer is entitled to "treatment commensurate with that given his fellow taxpayers within the municipality" and that if he is not, he is entitled to a judicial or quasi-judicial remedy. *In re Appeals of Kents 2124 Atlantic Ave., Inc., supra,* (34 N.J. at 25); *Feder v. City of Passaic,* 105 N.J. Super. 157, 160-161 (App. Div. 1969). By definition, a taxpayer has no discrimination grievance if the standard of valuation generally applied in the taxing district, if one is discernible, is not more favorable than that which has been applied in the assessment of his property. The short-hand term generally

employed since *Kents* for the just stated standard of valuation is a "common level". A common level for this purpose may be one which the assessor "consciously seeks to employ" throughout the taxing district (see *Kents, supra,* 34 N.J. at 30), provided the evidence reveals reasonably consistent adherence thereto. The central holding in *Kents* was that where there is no showing by the taxing district of a common level of assessment, the average ratio of the Director's sales ratio studies for the year in question for the particular municipality may be used as *prima facie* evidence of the level to which the true value of the property may be reduced if substantially greater than such ratio.[3] See 34 N.J. at 31.

The evolution of the discrimination remedy declared in *Kents* was against the background of the then common pattern of planlessness and chaos in local assessing practices. These conditions rendered a taxpayer who felt that he was discriminated against unable to prove his case and therefore remediless. See 34 N.J. at 29-30; *Tp. of Willingboro v. Burlington Cty. Bd. Tax., supra* (62 N.J. at 208-209); *Switz v. Middletown Twp.,* 23 N.J. 580 (1957). In *Kents* Chief Justice Weintraub expressly recognized that the taxpayer's exigency there presented could have been avioded if the taxing district had conducted periodic general revaluations of all ratables throughout the district. 34 N.J. at 29, 32. He stated that if the remedy there granted provoked, as feared, "a flood of appeals," this might "well quicken the official conscience and induce the district to revalue and to keep the rolls current". 34 N.J. at 32.

In any event, beginning shortly before the decision in *Kents,* and spurred by such decisions mandating assess-

3. The purposes and functions of the Director's sales ratio studies are explained at length in *Tp. v. Willingboro v. Burlington Cty. Bd. Tax.,* 62 N.J. 203, 209-213 (1973). Their prime value lies in estimating *aggregate* true values of ratables in a municipality and average ratios of *aggregated* assessed valuations to true values, not in determining the true value of particular properties or the ratio of assessment to true value of a particular property.

ment at true value as *Switz v. Middletown Twp., supra,* and *Ridgefield Park v. Bergen Co. Bd. of Taxation,* 31 N.J. 420 (1960), the local property tax bureau of the State Division of Taxation and the county boards of taxation influenced taxing districts throughout the state to improve their assessing practices and particularly to conduct general revaluations at frequent intervals. See *Tp. of Willingboro v. Burlington Cty. Bd. Tax., supra* (62 N.J. at 209). Undoubtedly as a result thereof, Edgewater conducted such revaluations in 1960, 1968 (that there involved) and in 1973, each applicable to the next tax year. See *Bergen Cty. Bd. of Tax. v. Bor. of Bogota, supra.*

It is thus apparent that the tax years here in question, 1971 and 1972, are about half way between general revaluations in the taxing district. The present taxpayer has not challenged the relative fairness of the 1969 tax-year reassessment of its properties *vis a vis* those of other taxpayers generally in the taxing district. It is manifestly evident in the record that real property generally in the municipality, as indeed almost universally, was in a rising trend of value as of October 1, 1968 and has been continuously since. The taxpayer did not challenge the testimony of the borough's expert that property in Edgewater including its own, was rising in value from 8% to 12% annually from 1968 to 1972 and beyond. The Director's ratios, relied upon by the taxpayer for other purposes, are indicative of the same general trend, and of the fact that as a result of constancy in the assessments since 1969, ratables weer being assessed on the average at substantially below their current market values by 1971 and 1972.

In this posture of the case ,the most determinative factor is that the taxpayer has made no effort to show that, relative to the generality of other assessed real property in the municipality, its property is being assessed on a less

favorable basis. It has not shown, and does not claim, that the value of its property has not sustained the same enhancement in true value between 1969 and the instant tax years that has undoubtedly attended the generality of other properties and which, at least *prima facie*, would seem to leave in a position of relative uniformity of tax treatment all property owners whose 1971 and 1972 assessments are at the same level as was fixed by a concededly fair and accurate general revaluation in 1968-1969. *Cf. Continental Paper Co. v. Vil. Ridgefield Pk.*, 122 N.J. Super. 446, 455 (App. Div. 1973), certif. den. 63 N.J. 328 (1973). We cannot sum up the deficiency in taxpayer's case better than to say it has not met the *Kents'* criterion (34 N.J. at 33): "A taxpayer who seeks a reduction of an assessment below true value must prove that his share of the total tax burden substantially exceeds the share allocated to others generally." In short, Edgewater assessed at a common level in 1971-1972, and this taxpayer was assessed at that level.

Taxpayer argues that it demonstrated the absence of a common level here for 1971 and 1972 in that the assessor testified, contradictorily, that his assessments for those years were at full current true value while admitting that the assessments generally were carried forward from year to year from those established at 1969 true value appraisals—concededly a lower level. The assessor's inconsistency is inescapable but so is the fact of the matter. The assessments were constant from 1969 through 1972. But we see no reason why a 1969 true value standard uniformly applied is not an acceptable common level in 1971 and 1972 for purposes of refuting a discrimination claim. As noted above, all taxpayers were treated alike in a period of generally rising values. If the instant taxpayer could show imperviousness of its property to the rising trend such as to render its assessment ratio substantially higher

than the generality of others, a colorable claim might be asserted. But that is not this case.

Taxpayer also argues that the wide range of ratios of assessments to sales prices reflected in individual sales of property in Edgewater shown in the Director's sales studies for 1971, varying from 23.55% to 108.70%, is demonstrative of the absence of uniformity in treatment of taxpayers or of a common level. The argument lacks merit. The 1971 sales in the Director's study numbered 34 of a total of some 1500 assessed parcels. Isolated sales may for any number of reasons produce unduly high or unduly low prices. As noted above, even so limited a sampling may nevertheless be useful in demonstrating an average ratio of aggregate assessments to aggregate market prices, but the outer ratio range of individual sales does not necessarily reflect the degree of departure from general uniformity of assessments of properties *inter sese*. Indeed, a substantial degree of uniformity may here well be the proper conclusion.[4]

What we have said above concerning the assessor's practices in this matter, viewed from the standpoint of a discrimination attack, impels the admonition that those practices are not necessarily approved as sound in relation to the proper assessment of individual properties. The law calls for the separate assessment of each parcel annually at its true value on the assessing date. *In re Appeal*

4. Our analysis of the 34 1971 sales referred to shows an average (unweighted) ratio of about 58% (for present purposes an unweighted ratio is preferable to the Director's weighted ratios; see Handbook for New Jersey Assessors (rev'd. 1965), p. 203 (by Bureau of Government Research, Rutgers, the State University)). The ratios of the 34 individual sales reflect a coefficient of deviation from the average of about 20%. The cited Handbook states (at p. 203) that "A coefficient of deviation of less than 20% is usually considered good," *i.e.*, not requiring a revalution. If one eliminates the four sales of most extreme deviation the remaining 30 show a coefficient of deviation of 16%. The coefficient of deviation in the 17 sales in the 1972 study is about 16%. Thus the two-year sampling of sales apparently shows an average coefficient of deviation which is "good."

of City of East Orange, 103 N.J. Super. 109, 113 (App. Div. 1968). While practicalities obviously preclude most assessors reviewing every assessment line item every year, see *Bergen Cty. Bd. of Taxation v. Bor. of Bogota,* 104 N.J. Super. 499, 507 (Law Div. 1969), there should nevertheless be alertness to changed valuation factors peculiarly affecting individual properties in years between revaluations and requiring prompt revision of such assessments in fairness to the particular taxpayer or to the taxing district. *Cf. Tp. of Willingboro v. Burlington Cty. Bd. Tax., supra* (62 N.J. at 213-214). It should be obvious that, absent such attention, the carrying over of assessments each year from one general revaluation to the next is not the proper discharge of the assessor's function.

For the reasons stated the judgment of the Appellate Division is affirmed.

APPENDIX J

PETITION FOR REHEARING TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF NEW JERSEY:

Petitioner-Appellant, Tri-Terminal Corporation, respectfully requests a rehearing of the matter which was the subject of the judgment of this Court entered on October 20, 1975 in this action.

PRELIMINARY STATEMENT

In reviewing the court's opinion in the matter, petitioner notes certain inconsistencies which are fundamental to the proper disposition of this case. Failure to correct such inconsistency will violate the taxpayer's fundamental rights guaranteed by both the federal and state constitution and the resultant confusion in the state decisional law will leave the state without clear standards by which an aggrieved taxpayer will be able to remedy unequal treatment.

ARGUMENT

This court in its opinion at page five states:

> "On the true value phase of the case the court (Appellate Division) analyzed the proofs and concluded that the Division's determination of true value of the improvements on the Ford tract was not supported by sufficient evidence. The court exercised its own fact-finding jurisdiction, determined that the *true value of the Ford tract was, for both tax years, the same as the assessments,* and restored the original assessments on both tracts for the tax years involved." (Emphasis added)

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And later on page nine, the court further states:

> In short, Edgewater assessed at a *common level* in 1971-1972, and this taxpayer was assessed at that *level.* (Emphasis added)

On the one hand, there is the finding that the taxpayer's property was assessed at its true value (that is market value as of the assessing date) in 1971 and 1972 and on the other hand, the statement that the property in question was assessed at a common level in 1971 and 1972. This court's discussion of the common level of assessment applied by the borough in 1971 and 1972 clearly indicates that the assessments were not at true value in those years.

> "The Director's ratios, relied upon the taxpayer for other purposes, are indicative of the same general trend, and of the fact that as a result of constancy in the assessments since 1969, *ratables were being assessed on the avarage at substantially below the current market values by 1971 and 1972."* (Emphasis added)

Clearly, the taxpayer can not be assessed at true value and at the same time be assessed at a common level—"substantially below current market values."

It is uncontested from the testimony in this case and this court's opinion that property values in the borough of Edgewater substantially increased in value from 1968 through 1972 and beyond. The court notes that the borough's expert testified that property values in general rose from 8 to 12% annually from 1968. The court further notes that the Director's ratios substantiate this statement made by the borough's expert (page 8). The conclusion to be drawn from this is inescapable. Taxpayer's prop-

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erty remained constant in value while other property in the borough increased substantially. The application of the 1968 level of assessments in 1971 and 1972 discriminated against this taxpayer and denied it equal protection of the laws. *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 52 S. Ct. 48, 76 L. Ed. 146 (1931); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 146 (1930).

CONCLUSION

Petitioner strongly urges the court grant the request for a rehearing of this appeal to correct inconsistencies that have been found in the court's opinion. In the alternative petitioner requests that this court exercise such jurisdiction as is necessary for the complete determination of the matter on review in accordance with R. 2:11-6(c).

Respectfully submitted,

WATERS, McPHERSON
& HUDZIN

By: /s/ Kenneth D. McPherson
KENNETH D. McPHERSON

CERTIFICATION

I hereby certify that this Petition for Rehearing is submitted in good faith and not for purposes of delay.
Dated: October 30, 1975

/s/ Kenneth D. McPherson
KENNETH D. McPHERSON

I further certify that I have caused nine copies of this Petition to be filed with the Clerk of the Supreme Court and have caused two copies of the Petition to be served upon the attorney for respondent, William C. Meehan, Esquire, 29 Main Street, Hackensack, New Jersey.
Dated: October 30, 1975

/s/ Kenneth D. McPherson
KENNETH D. McPHERSON

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APPENDIX K

ORDER OF THE SUPREME COURT OF THE STATE OF NEW JERSEY

This matter having been duly presented to the Court, it is ORDERED that the motion for rehearing is denied.

The Court has not made inconsistent findings of fact concerning the true value of the property for the tax years 1971 and 1972. The reference in the Court's opinion to the determination by the Appellate Division as to the true value of the property did not constitute an adoption by this Court of such determination of value since the valuation phase of the original appeals to the Division of Tax Appeals, and to the Appellate Division, was not before this Court, but only the issue of discrimination.

Properly speaking, the issue of the absolute true value of the properties was not before the Appellate Division either, and was not decided by it. The question before the Appellate Division, on the true value phase of the case, was whether the assessments were in excess of true value.

The Appellate Division was not faced with the question whether the assessments were less than true value. Thus the question as to the absolute true value of the properties was not before the Appellate Division for adjudication.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, as Trenton, this 10th day of December, 1975.

/s/ Florence R. Peskoe
FLORENCE R. PESKOE
Clerk